

### **REMARKS**

Claims 1 to 44 are the pending claims being examined in the application, of which Claims 1, 6, 7, 14, 15, 22, 23, 28, 29, 34, 35, 41 and 44 are the independent claims. Claims 1 to 42 are being amended and Claims 43 and 44 are being added. Reconsideration and further examination are respectfully requested.

Claim 2 is objected to for the reason that the claim preamble refers to “A method” rather than “The method”. The Examiner suggests that the claim be amended to use the phrase “The method” to conform the language to that used in other dependent claims, and to avoid “any possible antecedent basis issues”. While the Applicant does not consider that there is an antecedent basis issue involved, the Applicant has amended the claim to read “The method”, to conform the wording with that used in other claims. The Applicant thanks the Examiner for his suggestion. Similar amendments are made to Claims 8, 16, 24, 30 and 36.

Turning to the rejection of the claims based on art, Claims 1 to 3, 5 to 9, 11 to 17, 19 to 25, 27 to 31, 33 to 37 and 39 to 42 are rejected under 35 U.S.C. § 103(a) over the article entitled “An Exclusive Interview With Michael Weiss, TuneTo.com” by Mark Shands (hereinafter referred to as “Shands”) and the article entitled “Q&A With Tim Bratton, President of TuneTo.com” by Jose Alvear (hereinafter referred to as “Alvear”), and Claims 4, 10, 18, 26, 32 and 38 are rejected under 35 U.S.C. § 103(a) over Shands, Alvear and the article entitled “TuneTo.com Seals \$2.6 Million Series A Funding” by Mark Smotroff (hereinafter referred to as “Smotroff”). Reconsideration and withdrawal of the rejections are respectfully requested.

Claim 1 recites a method for providing a data stream according to preferences of a community. Each member of the community has associated preferences regarding data stream content, and each member of the community has been determined to have at least one data stream content preference in common. Characteristics of the first community members’ preferences are determined to provide determined characteristics. An individual data stream is defined by selecting content for inclusion in the individual data stream according to the determined characteristics of the first member community’s preferences regarding data stream content.

The applied art fails to teach, suggest or disclose defining an individual data stream for a community by selecting content for inclusion in the individual data stream according to determined characteristics of community whose members have been determined to have at least

one preference for data stream content in common, and/or selecting the content in accordance with characteristics of preferences of a first community whose members have been determined to have at least one preference in common.

In contrast to the claimed content selection, as best as can be determined from the references discussing the TuneTo.com, that system apparently identified a number of pre-existing channels that a user might like based on the user's preferences. A user could select from one of the pre-selected channels or any other channel. While TuneTo.com apparently helped the user to find a station that the user might like, the user is not limited to only the pre-selected channels, and TuneTo.com does not prohibit a user from listening to a channel that was not one of the channels identified by TuneTo.com.

The cited art indicates that TuneTo.com "introduces new releases" for a channel, but (as is conceded in the Office Action) fails to provide any description as to how new releases are selected for playing on a given channel. Furthermore, and while TuneTo.com allows listeners to indicate a "thumbs up" or a "thumbs down" to new releases that are selected by TuneTo.com, any user listening to a channel can provide the input. There is nothing in the description of the TuneTo.com system that limits a listener to only those channels pre-selected by TuneTo.com and the TuneTo.com system does not check whether or not a listener is providing input for a channel identified by TuneTo.com. TuneTo.com listeners that provide the input can be any of the TuneTo.com users, and TuneTo.com considers the input regardless of whether or not the listener is one of the users for which the channel was pre-selected. No determination is made if the TuneTo.com listeners that give a thumbs-up or thumbs-down have preferences in common, much less applying that commonality to customize an individual data stream. Nothing in the TuneTo.com system discussed in Shands and/or Alvear teaches, suggests or discloses defining an individual data stream by selecting content for inclusion in an individual data stream in accordance with characteristics of preferences of a community whose members have been determined to have at least one preference in common.

The Smotroff article has been reviewed and is not considered to remedy the deficiencies of the cited TuneTo.com references noted above. The remaining articles cited but not applied by the Examiner with reference to the TuneTo.com system have also been reviewed and are not considered to remedy the deficiencies noted above.

None of the articles teach, suggest or disclose defining an individual data stream by selecting content for inclusion in a the individual data stream in accordance with characteristics of preferences of a community whose members have been determined to have at least one preference in common. Furthermore, and since the Shands, Alvear and Smotroff lack these (and other) elements of the claims, the proposed combinations of references cannot form the basis of a proper § 103(a) rejection as none yields all of the elements of the claim.

Independent Claim 1 and the claims that depend therefrom are therefore believed to be in condition for allowance. For at least the same reasons stated in connection with Claim 1, independent Claims 6, 7, 14, 15, 22, 23, 28, 29, 34, 35 and 41, and the claims that depend from these claims, are believed to be in condition for allowance. Additional elements recited in these claims are also not believed to be taught, suggested or disclosed by the applied art.

New Claims 43 and 44 are supported by the application as originally-filed, including *inter alia* the description commencing at paragraph 37 of the publication of the application, i.e., U.S. Publication No. 2003/0046399.

Claim 43 recites a method of determining a first community of members that have at least one stored preference for data stream content in common by filtering a data store of preferences for data stream content, determining data stream elements of the data stream content preferred by the first member community by filtering the data stream content using the stored preferences of the members of the determined first community, defining an individual data stream by further filtering the determined data stream elements using the stored preferences of the first member community to select at least one data stream element from the determined data stream elements for inclusion in the individual data stream, and transmitting the individual data stream to a user computer.

Claim 44 further recites that the stored preferences include rating information, the stored preferences are filtered using a first rating threshold to determine the first community, each member of the first community having a preference for at least one data stream element in the data stream content such that the rating information of the member for the at least one data stream element satisfies the first rating threshold, the determined data streams are determined by filtering the data stream content using rating information of the first community and a second rating threshold, each data stream element determined having rating information of at least one member of the first community that exceeds the second rating threshold, and the individual data

stream is defined by further filtering the determined data stream elements, each data stream element selected from the determined data stream elements is determined to be preferred by at least a threshold percentage of said members of said first community.

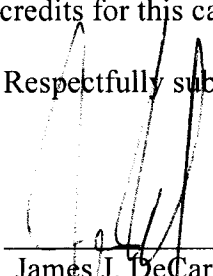
For at least the reasons discussed above, the TuneTo.com system fails to teach, suggest or disclose multiple ones of the elements of Claims 43 and 44. Claims 43 and 44 are therefore believed to be patentable over the TuneTo.com system.

In view of the foregoing, the entire application is believed to be in condition for allowance. Should matters remain which the Examiner believes could be resolved in a telephone interview, the Examiner is requested to telephone the Applicant's undersigned attorney.

In this regard, Applicant's undersigned attorney may be reached by phone at (212) 801-6729. All correspondence should continue to be directed to the below-listed address.

The Commissioner is hereby authorized to charge any required fee in connection with the submission of this paper, any additional fees which may be required, now or in the future, or credit any overpayment to Account No. 50-2638. Please ensure that the Attorney Docket Number is referred when charging any payments or credits for this case.

Respectfully submitted,

  
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